



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF PETROV v. RUSSIA

(Application no. 7061/02)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Petrov v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 30 November 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 7061/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vitaliy Sergeyevich Petrov (“the applicant”), on 9 August 2001.

2. The applicant, who had been granted legal aid, was represented by Mr S. Kiryukhin, a lawyer practising in Orsk. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the decision of the regional court to quash the judgment in his favour and remit the case frustrated his right to a fair trial and deprived him of the fruits of the litigation.

4. By a decision of 10 November 2005 the Court declared the application partly admissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1948 and lives in Orsk, Orenburg Region. He is a private entrepreneur.

6. In July 1998 the applicant purchased a flat on the ground floor of an apartment building with a view to opening there a shop. In August 1998 he started construction works there with a view of tailoring the flat to

commercial needs. On several occasions in 1998-1999 the local administration fined the applicant for unauthorised construction. In 1999 the police instituted criminal proceedings against him in this respect, but in 2000 the court acquitted him. The court found that the applicant had carried out works without a relevant permission. However, in the court's opinion, it did not amount to a criminal offence.

7. The flat bought by the applicant belonged to the category of "living premises", and could not be used for other purposes than providing housing. In order to function as a shop, the flat had to be officially re-classified as "non-residential premises". With that view the applicant addressed the Orsk Town Administration (the local executive authority) with a request for re-classification of the flat. On 23 March 2000 that request was rejected.

8. The applicant challenged the refusal in court. On 8 September 2000 the Orsk Town Leninskiy District Court held in the applicant's favour ordering the local administration to re-classify the applicant's real estate. No appeal followed, and ten days later the judgment became final. On 23 September 2000 enforcement proceedings were instituted.

9. On 16 October 2000 the Town Administration issued an order allowing commercial use of the applicant's flat. Following that decision on 4 November 2000 the bailiffs' service discontinued the execution proceedings. However, the applicant was still unable to start his business because certain other formalities were not observed and additional permits were needed. In particular, the local authority had refused to provide the applicant with a certified plan of his flat claiming that the order of 16 October 2000 was not sufficiently clear. The applicant appealed to a court. On 25 May 2001 the Leninskiy District Court rejected his claim, stating that the judgment of 8 September 2000 had been duly executed, and that the bailiff's decision to discontinue the execution proceedings had been lawful. This judgment was upheld by the Orenburg Regional Court on 28 June 2001.

10. On 18 October 2001 a prosecutor lodged a supervisory review appeal against the judgment of 8 September 2000. On 10 December 2001 the Presidium of the Orenburg Regional Court quashed the above judgment. The Presidium held in particular that pursuant to Article 9 of the Housing Code a decision to turn a flat into a commercial facility could only been taken at the regional level, the Town Administration having no authority in that respect. The Presidium also held that the lower court had not examined the opinion of other residents of the apartment building where the applicant's flat was situated. Moreover, the Town Administration had failed to assess possible environmental impact of the functioning of the shop and had not obtained a report from a competent authority. The case was remitted to the first instance court for a fresh examination.

11. In the meantime, on 24 October 2001 the Orsk Town Council (*Орский городской совет депутатов*) adopted a new regulation

concerning non-residential facilities. Pursuant to that regulation the permission to re-arrange a flat for commercial purposes must be issued by the Town Council instead of the Town Administration. On 28 March 2002 the applicant revoked his initial action against the Town Administration, pending before the Leninskiy District Court and re-submitted his request for re-classification of the property to the Town Council. On 24 April 2002 this body dismissed his request on the ground that a number of the applicant's immediate neighbours objected to a shop being established in the building.

12. The applicant brought an action against the Town Council. On 11 June 2002 the Leninskiy District Court rejected it on the ground that the neighbours of the applicant strongly opposed to his plan to open the shop. On 16 July 2002 the Orenburg Regional Court upheld that decision.

II. RELEVANT DOMESTIC LAW

13. Article 11 of the Code of Civil Procedure of 1964, as in force at the material time, provided that regional and higher courts could conduct “supervisory review” of the decisions of the lower courts. This meant, according to Articles 319, 320 and 327, that specific senior judicial and prosecution officers could, at any time, at the request of a party or of their own motion, lodge with a higher court an “extraordinary appeal” against the final decision on all questions of fact and law. If an “extraordinary appeal” was lodged, the proceedings recommenced and execution of the final judgment would be adjourned (Article 323). For further details concerning the supervisory review proceedings see the case *Ryabykh v. Russia*, no. 52854/99, §§31-42, ECHR 2003-IX.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The applicant complained that the decision of the Presidium of the Orenburg Regional Court of 10 December 2001 to quash the judgment of 8 September 2000 and remit the case frustrated his right to a fair trial. His complaint falls to be examined under Article 6 § 1 of the Convention, which reads, insofar as relevant, as follows:

Article 6

“In the determination of his civil rights and obligations... everyone is entitled to a fair... hearing ... by [a]... tribunal established by law...”

A. The parties' submissions

15. The Government submitted that the decision of the Presidium of the Orenburg Regional Court, complained of by the applicant, was aimed at correcting a judicial error of the lower court. In particular, the lower court failed to take into account legitimate interests of other residents of the building, where the applicant intended to open a shop. Therefore, the quashing of the judgment of 8 September 2000 was not against the principle of “legal certainty” enshrined in Article 6 § 1 of the Convention (*Ryabykh v. Russia*, no. 52854/99, §§ 52, 24 July 2003).

16. The applicant maintained his initial complaint.

B. The Court's assessment

17. The Court recalls its constant case-law to the effect that the quashing by way of supervisory review of a judicial decision which had become final and binding may render the litigant's right to a court illusory and infringe the principle of legal certainty (see *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003; *Roseltrans v. Russia*, no. 60974/00, §§ 27-28, 21 July 2005). Indeed, in certain circumstances a final and binding judgment may be revised, but the power of review should not be used in an arbitrary manner (see *Ryabykh v. Russia*, mentioned above, § 52; see also, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, §§ 57 and 59, ECHR 2004-VIII). The question arises whether the reasons for quashing forwarded by the authorities in the present case could have justified it.

18. The Government referred to the failure of the lower court to take into account interests of the neighbours of the applicant. Besides, the Presidium of the Regional Court referred to the fact that the local administration had not been competent to allow commercial use of the flat. However, in the opinion of the Court, even against that background the authorities have abused their power to initiate the review of an allegedly faulty judgment.

19. First, the Court notes that the extraordinary appeal was lodged by the prosecutor, who was not a party to the proceedings, and that the exercise of his power to re-open the case was not subject to any time-limit (see the *Ryabykh* judgment mentioned above, § 54). In the present case the review took place almost fifteen months after the judgment became enforceable. Second, the judgment at issue was not challenged by an ordinary way, that was through the court of appeal. The Government did not point to any

exceptional circumstances that would have prevented the local administration from making use of an ordinary appeal in good time. Third, the judgment was executed and the execution proceedings were subjected to the judicial control at two instances, including in the Regional Court, before the case was transmitted to the Presidium of that court for re-consideration on the merits. In sum, even though the interests of the applicant's neighbours were an important consideration, the authorities failed to protect them in an appropriate manner.

20. Having regard to the circumstances, the Court does not find any reason for departing from its aforementioned case-law and considers that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicant's case.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

21. The applicant further complained that the decision of the Presidium of the Orenburg Regional Court of 10 December 2001 to quash the judgment of 8 September 2000 and remit the case deprived him of the fruits of the litigation. This complaint falls to be examined under Article 1 of Protocol No. 1 which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

22. The Government argued that the applicant's “possession” within the meaning of Article 1 of Protocol No. 1 was his flat. The restriction on the right to use his flat, namely the prohibition to use it for any other purpose than housing was inherent to that kind of property. The applicant kept his right to the flat and, therefore, his “possessions” were not interfered with.

23. The applicant in reply maintained his arguments.

24. In the present circumstances, in view of its finding under Article 6 § 1, the Court considers that it has given the answer to the question at the heart of the applicant's grievances. Therefore, it finds that it is not necessary to examine separately the facts complained of also under of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

26. The applicant claimed that if he used his flat as a shop, his net income by 2005 would be 67,038 EUR. He based his calculations on the amount of the “imputed income” which the tax authority applied to small enterprises like the shop that he had been planning to open.

27. The Government submitted that the applicant's calculations of just satisfaction had been based on the lost income that he could have received by using his apartment for commercial needs. However, these calculations were purely theoretical and could not serve as a ground for awarding him the amount sought.

28. The Court notes that even though the re-classification of the premises was an important step in furthering the applicant's business plan, it was not the sole precondition for starting the intended commercial activity. In other words, the opening of the shop depended on many factors out of the applicant's control, such as, for example, the authorisation to reconstruct the flat for commercial purposes (see paragraph 6 above). Therefore, there is no direct causal link between the quashing of the court's decision allowing commercial use of the applicant's flat and the lost income claimed by the applicant on the basis of an assumption that his business plan would succeed. The Court concludes therefore that the applicant's claim should be rejected.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the quashing, by way of supervisory review, of a final judgment in the applicant's favour;
2. *Holds* that there is no need to examine the above complaint under Article 1 of Protocol No. 1 to the Convention;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President